

Application No. 10/709,626
Reply to Office Action of December 5, 2005

Docket No.: 12051-00001-US

REMARKS

Claims 1-8 and 10-18 are pending and stand rejected. Claims 1 and 18 are amended. Support for the subject matter added to claims 1 and 18 is found in the specification *inter alia* at paragraph 0029 and Figures 2-4, 7 (note reference number 14, 36, 52 and 54). Applicant respectfully requests entry and reconsideration of these claim amendments as they are believed to place the rejected claims in better form for consideration on appeal. See 37 CFR 1.116.

REJECTIONS UNDER 35 U.S.C. § 103(a)

In establishing a *prima facie* case of obviousness under 35 U.S.C. 103, the Examiner has the burden of establishing (1) some suggestion or motivation to modify the reference or to combine reference teachings, (2) a reasonable expectation of success, and (3) that the prior art references, when combined, teach or suggest all the claim limitations.¹ "Both the suggestion and the reasonable expectation of success must be found in the prior art, not in the Appellants' disclosure."²

Claims 1-5, 8, 10-12 and 17 were rejected under 35 U.S.C. 103(a) as unpatentable over Seely (US 33854) in view of Sankar (US 4412495).

Applicant respectfully traverses the rejection of claims 1-5, 8, 10-12 and 17 under 35 U.S.C. 103(a) as being unpatentable over Seely in view of Sankar. Seely discloses a breech loaded battery integrated onto the front of a breast plate actuated by the user by pulling a pistol trigger also placed on the front of the breast plate. Actuation of the breech loaded battery can only be achieved by exposing the user's hand and arm to hostile activity.

Sankar discloses a total body protective shield made of bullet proof panels to provide ballistic protection to the user. It does not disclose any firearms mounted to the shield as claimed by applicant. Neither reference discloses mounting of a firearm to a ballistic shield that is

¹ See MPEP §2143 (Aug. 2001).

² *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438 (Fed. Cir. 1991).

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dischargeably operable by the user from a face of the shield oriented toward the user. This placement of the firearm provides complete protection of the user while simultaneously allowing the user to discharge a firearm from behind the shield at an aggressor. Therefore Sankar cannot fill the gap of Seely. Hence the instant rejection cannot make out a *prima facie* case of obviousness because the cited references do not disclose all the claimed elements. Therefore, for at least these reasons, claim 1 as currently amended, and all claims depending from claim 1, distinguish over Seely in view of Sankar and should be allowed. Accordingly, Applicant respectfully requests that the rejection be withdrawn and the claims allowed to issue.

Claims 6-7, 13-14, 16 and 18 were rejected under 35 U.S.C. 103(a) as unpatentable over Seely and Sankar as applied to claim 1, and further in view of Resnick (US Patent 6272781).

Applicant respectfully traverses the rejection of claims 6-7, 13-14, 16 and 18 under 35 U.S.C. 103(a) as being unpatentable over Seely and Sankar in view of Resnick. Seely and Sankar were summarized above. Resnick does not fill the gap in the disclosures of Seely and Sankar. Resnick discloses a protective garment for wear by a user. Resnick does not disclose mounting a firearm to a ballistic shield that is dischargeably operable by the user from a face of the shield oriented toward the user as currently recited in these claims. Hence the instant rejections of claims 6-7, 13-14, 16 and 18 cannot make out a *prima facie* case of obviousness because the cited references do not disclose all the claimed elements. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Claim 15 was rejected under 35 U.S.C. 103(a) as unpatentable over Seely and Sankar as applied to claim 1, and further in view of Lobdell (US Patent 1,227,544).

Applicant respectfully traverses this rejection of claim 15. Seely and Sankar were summarized above. Lobdell does not fill the gap in the disclosures of Seely and Sankar. Lobdell discloses a gun sight for a firearm designed to correct for blurring due to incorrect focusing by the user. Lobdell does not disclose mounting a firearm to a ballistic shield that is dischargeably operable by the user from a face of the shield oriented toward the user as currently recited. Hence the instant rejections of claim 15 cannot make out a *prima facie* case of obviousness

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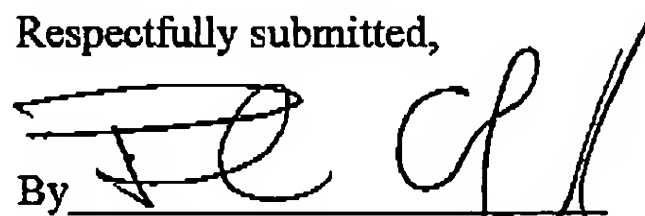
because the cited references do not disclose all the claimed elements. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12051-00001-US from which the undersigned is authorized to draw.

Dated: March 2, 2006

Respectfully submitted,



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